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passenger has been safely deposited at his destination by the carrier. *Brunswick, etc., R. Co. v. Moore*, 101 Ga. 684, 28 S. E. 1000; *Killmeyer v. Wheeling Traction Co.*, 72 W. Va. 148, 77 S. E. 908, 48 L. R. A. (N. S.) 683. This relation is not terminated by the temporary departure of the passenger from the train for any proper purpose. Thus, a passenger may leave to procure refreshments. *DOBIE, BAILMENTS AND CARRIERS*, § 173; *Atchison, etc., R. Co. v. Shehan*, 18 Colo. 368, 33 Pac. 108; *Peniston v. Chicago & R. Co.*, 34 La. Ann. 777, 44 Am. Rep. 444. And a passenger may leave the train temporarily for exercise on the station platform without severing the relation of carrier and passenger. *Gannon v. Chicago & R. Co.*, 141 Ia. 37, 117 N. W. 966. Again, a passenger may get off at an intermediate station where passengers are received and discharged in order to send or receive a telegram, or to attend to any private business, without releasing the carrier from its high degree of responsibility. *Dice v. Willamette Transportation, etc., Co.*, 8 Ore. 60, 34 Am. Rep. 575; *Alabama & R. Co. v. Coggins*, 88 Fed. 455. But where the train stops at an intermediate point to allow another train to pass and not for the purpose of discharging and receiving passengers, one who leaves the train, though for a necessary purpose, loses his identity as a passenger. *State v. Grand Trunk R. Co.*, 58 Me. 176, 4 Am. Rep. 258; *Chicago, etc., R. Co. v. Sattler*, 64 Neb. 636, 90 N. W. 649, 57 L. R. A. 890. In accordance with this theory it has been held that a passenger on a through train, which stops at an intermediate point for some purpose connected with its operation and not to receive or discharge passengers, ceases to be a passenger when he leaves the train at such point, without the knowledge or consent of the operatives of the train. *Lemery v. Great Northern R. Co.*, 83 Minn. 47, 85 N. W. 908.

Where the passenger's ticket calls for a transfer he retains his status as a passenger while proceeding from one of the carrier's vehicles to the other. *Wagler v. Jersey City, etc., R. Co.*, 71 N. J. L. 356, 59 Atl. 14; *Keator v. Scranton Traction Co.*, 191 Pa. 102, 43 Atl. 86, 44 L. R. A. 546. But the relation terminates where it is necessary for the passenger to use a public highway in making the transfer. *Niles v. Boston Elevated R. Co.*, 225 Mass. 570, 114 N. E. 730.

The instant case is in accord with the weight of authority on this question. In such cases the relation of carrier and passenger is held to continue, the carrier being bound to use proper care to have the way over which the passenger must go in a reasonably safe condition. *Killmeyer v. Wheeling Traction Co.*, *supra*; *Colorado, etc., R. Co. v. Petit*, 37 Colo. 326, 86 Pac. 121. Another reason sometimes advanced for holding the carrier liable is, that it has, by extending an invitation to the passenger and providing a way for him to pass, assumed an obligation to make reasonable provision for his safety. *Powers v. Old Colony St. R. Co.*, 201 Mass. 66, 87 N. E. 192.

DAMAGES—PUNITIVE DAMAGES—WHEN AWARDED.—The plaintiff, who had entered the defendant's store with several companions, heard a controversy on the opposite side of the room and went across to investigate it. The defendant was ordering the plaintiff's companions out of the store, and before the plaintiff could reach the door the de-

fendant hit him with a cleaver several times and the defendant's clerk stabbed him. The plaintiff brought an action against the defendant and recovered in the lower court punitive damages in addition to large compensatory damages. *Held*, punitive damages will not be awarded in a case where the compensatory damages are sufficiently large to punish the defendant. *Hess v. Marinari* (W. Va.), 94 S. E. 968. See NOTES, p. 492.

**DIVORCE—CUSTODY OF CHILD—RIGHT OF SURVIVING PARENT.**—Appellee secured a divorce from his wife on the ground of desertion. The decree gave the custody of their infant child to the wife. At her death a will was found conferring her rights in the child upon her parents. The appellee, who was the natural guardian of the child and a fit person morally, attempted to obtain the custody of his child by *habeas corpus*. The deceased wife's parents brought a suit in equity to enjoin him from securing her. *Held*, the father is entitled to the custody of his child. *Rallihan v. Motschmann* (Ky.), 200 S. W. 358.

It is a well settled general principle of law that the death of a parent, who has been awarded the custody of the children by a decree of divorce, gives the surviving parent the prima facie right to reacquire the dominion and control of them. *Schammel v. Schammel*, 105 Cal. 258, 38 Pac. 729; *Barnes v. Long*, 54 Ore. 548, 104 Pac. 296, 25 L. R. A. (N. S.) 172, 21 Ann. Cas. 465 and note. This rule is applicable even though, at the time the divorce was granted, the surviving parent was denied the custody on account of misconduct or unfitness. *Bryan v. Lyon*, 104 Ind. 227, 3 N. E. 880, 54 Am. Rep. 309; *In re Neff*, 20 Wash. 652, 56 Pac. 383. Illinois however holds the opposite view. There is a line of cases in that State holding that a divorce *a vinculo*, which grants custody of the children to the wife because of the misconduct of the husband, *ipso facto* annuls any claim that the husband may have to the custody of the children. *Wilkinson v. Deming*, 80 Ill. 342, 22 Am. Rep. 192.

As in all cases, however, that concern the custody of infant children, the welfare of the child is the prevailing consideration, and if it can be shown that the surviving parent is unfit to properly rear and manage the child, he will be given no control over it. *In re Steele*, 107 Mo. App. 567, 81 S. W. 1182; *Clark v. Lyon*, 82 Neb. 625, 118 N. W. 472, 20 L. R. A. (N. S.) 171 and note. There is a very strong presumption, however, that the surviving parent is a competent party. The burden of proving his incapacity is cast upon those who dispute his claim. This proof must be in its nature positive and not comparative merely, and it must be shown by solid and substantial reasons that the surviving parent is so unfit that the welfare of the child absolutely demands that he be denied the custody. *Clark v. Lyon*, *supra*; *Wilson v. Mitchell*, 48 Colo. 454, 111 Pac. 21, 30 L. R. A. (N. S.) 507. In such cases as these, while the wishes of the child, if of sufficient age to have proper discretion, will be given great weight in determining its proper custodian, nevertheless, if the child be for some reason incapable of making a wise choice, its wishes will not be considered. *Wilson v. Mitchell*, *supra*.

The granting of the custody of a child confers a distinctly personal charge. This personal charge is dependent upon the continued exist-